

Come in!? A study of the effectiveness and effects of articles 1 and 2 of the general entry act

Summary

The objective of the study is to portray the practical effectiveness and effects of articles 1 and 2 of the General entry act (Awbi). These articles regulate the procedure to be followed at entry.

The central phrasing of the study reads: Are the requirements mentioned in articles 1 and 2 of the Awbi implemented in practice. If so, to what extent and in what way? If not, why not? What are the effects on daily practice, in case articles 1 and 2 are or are not implemented?

In order to answer these questions, documents have been studied, a survey has been conducted (224, 125 of which have been completed) and 25 people have been interviewed. Since the Awbi is applied in the sphere of investigation, enforcement (among others surveillance of compliance) and implementation of among others writs of execution, the respondents have been selected from the basic police, the detective department, the department of special police acts, the Internal Revenue Service, the General Inspectorate, the building inspection department and the bailiffs. Furthermore the inhabitants whose houses have been entered into are also involved in this study. With this object authorities have been interviewed who grant an authorization and organisations that are supposed to report how inhabitants experience entry. For example, solicitors, legal advice centres, the complaint committee of the police, municipal ombudsman/-committees and the National ombudsman.

The main objective of the Awbi is to protect the basic right of the inviolability of the home. The study shows that the inviolability of the home is given insufficient protection in the sphere of routine building inspection. As far as routine matters are concerned, the officials interviewed of the building inspection department appear quite often to omit to identify themselves, to mention their cause and to ask for permission. They are just admitted. In special cases they do observe the legally required procedure and also have an authorization which they show to the inhabitant.

The inviolability of the home is adequately protected in the sphere of (special) investigation and implementation of writs of execution. The police officials, officials of the special acts department, officials of special investigation services and bailiffs observe the legally required procedure; the majority appears to identify themselves prior to entry and to mention the reason why they want to enter. In general they also possess the necessary written authorisation and show it to the inhabitant. The officials mentioned above also appear to ask for permission, whereas they are entitled to enter without permission and already are in the possession of an authorization.

At entry permission might be asked in a clearer and more explicit way. For inhabitants appear to be insufficiently acquainted with their rights and duties at entry. In this respect the inviolability of the home can be protected in a better way.

There a relatively few complaints about entry. In half of the complaints examined, entry appeared to have happened contrary to articles 1 and/or 2. If during a criminal procedure it should appear that entry has happened contrary articles 1 and/or 2, the court will usually find the entry illegal. So in this respect the inviolability of the home is sufficiently protected.

Another important objective of the Awbi is to clarify the regulation for entry. The study shows that the regulation is considered to be clearer and that no significant effects have occurred in its practical implementation, since the act came into force.

Komt u binnen...?! Een onderzoek naar de doeltreffendheid en effecten van artikel 1 en 2 van de Algemene wet op het binnentreden

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